

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-AT-410
)	
Barnacle Broadcasting Company Ltd.)	NAL/Acct. No.200332480010
Owner of Antenna Structure #1063961)	
in Port Royal, South Carolina)	FRN 0006-1527-55
Atlanta, Georgia)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 21, 2003

By the Enforcement Bureau, Atlanta Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Barnacle Broadcasting Company, Ltd. (“Barnacle Broadcasting”) apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.51 of the Commission's Rules (“Rules”).¹ Specifically, we find Barnacle Broadcasting apparently liable for failure to exhibit red obstruction lighting from sunset to sunrise on the antenna structure assigned Antenna Structure Registration (“ASR”) number 1063961 in Port Royal, South Carolina.

II. BACKGROUND

2. Antenna structure 1063961 is located in Port Royal, South Carolina. Barnacle Broadcasting is the registered owner of this structure. The structure’s ASR specifies that the structure be painted and lit with red obstruction lighting.

3. On November 25 and 26, 2002, after local sunset, an agent from the Commission’s Atlanta Field Office inspected antenna structure 1063961 in Port Royal, South Carolina and observed that all of the lights on the structure were not illuminated per assigned painting and lighting specifications. The Federal Aviation Administration (“FAA”) had no record of any report of a light outage for this structure.

4. On November 27, 2002, the FCC agent spoke with Mr. Pegram Harrison of Barnacle Broadcasting. Mr. Harrison acknowledged that Barnacle Broadcasting owned antenna structure 1063961 and that he was unaware that the structure’s lights were extinguished. When asked how Barnacle Broadcasting monitored the condition of the lights, Mr. Harrison stated that he relied on tenants leasing space on the antenna structure and on pilots from a nearby military base.

III. DISCUSSION

¹ 47 C.F.R. § 17.51.

5. Section 17.51 of the Rules requires that all red obstruction lighting be exhibited from sunset to sunrise unless otherwise specified. Barnacle Broadcasting owns antenna structure 1063961 and is required to exhibit red obstruction lighting on that structure from sunset to sunrise. On November 25, 2002 and November 26, 2002, Barnacle Broadcasting failed to exhibit red obstruction lighting from sunset to sunrise on antenna structure 1063961 in Port Royal, South Carolina. In addition, Barnacle Broadcasting failed to immediately notify the FAA of the improper functioning of the structure's lighting² and also failed to provide an acceptable method of monitoring the condition of the lights.³

6. Based on the evidence before us, we find Barnacle Broadcasting willfully⁴ and repeatedly⁵ violated Section 17.51 of the Rules by failing to exhibit red obstruction lighting from sunset to sunrise on antenna structure 1063961 in Port Royal, South Carolina.

7. Pursuant to Section 1.80(b)(4) of the Rules,⁶ the base forfeiture amount for failure to comply with prescribed lighting and/or marking is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷ Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ Barnacle Broadcasting Company, Ltd. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.51 of the Rules by failing to exhibit red obstruction lighting from sunset to sunrise on antenna structure 1063961 in Port Royal, South Carolina.

² Owners of registered antenna structures with assigned lighting must immediately report to the FAA any known improper functioning of any top or flashing light. *See* 47 C.F.R. § 17.48(a).

³ The owner of any registered antenna structure that has assigned lighting specifications shall make an observation of the structure's lights at least once each 24 hours or provide an automatic alarm system. *See* 47 C.F.R. § 17.47(a).

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁵ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁶ 47 C.F.R. § 1.80(b)(4).

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Barnacle Broadcasting Company, Ltd., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

14. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Barnacle Broadcasting Company Ltd., 3 Yonah Drive, Atlanta, Georgia, 30309.

FEDERAL COMMUNICATIONS COMMISSION

¹⁰ See 47 C.F.R. § 1.1914.

Fred L. Broce
Atlanta Office, Enforcement Bureau

Attachment